

ANDREW A. HARROWER

IBLA 80-541

Decided December 31, 1980

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting application for right-of-way W 58449.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Act of February 15, 1901 -- Rights-of-Way: Applications -- Rights-of-Way: Federal Land Policy and Management Act of 1976

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

APPEARANCES: Andrew A. Harrower, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Andrew A. Harrower has appealed from the March 14, 1980, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his right-of-way application for an access road and canal.

On February 15, 1977, appellant filed an application for a right-of-way pursuant to the Act of February 15, 1901, 43 U.S.C. § 959 (1970), repealed, section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793. Issuance of a right-of-way is now governed by Title V of FLPMA, 43 U.S.C. §§ 1761-71 (1976). On June 15, 1977, appellant filed an application with the State of Wyoming, Office

of the State Engineer, for a water permit. The Office of the State Engineer eventually rejected appellant's application for failure to respond to its letters of October 18, 1978, November 17, 1978, January 18, 1979, June 21, 1979, and July 24, 1979, concerning appellant's application. Subsequently, on March 14, 1980, the Wyoming State Office, BLM, rejected appellant's right-of-way application for failure to file satisfactory evidence of water rights from the Wyoming State Engineer.

Appellant contends that the rejection of the application for a water permit under the Wyoming State Engineer's office stemmed from the fact that the firm he contracted to do the work was too busy to complete the necessary work.

[1] The applicable regulation, 43 CFR 2802.1-5(b), states:

If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within a specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

We find that the record supports the BLM determination to reject appellant's right-of-way application. The failure to file a statement of the proper State official or other evidence showing that appellant has a right to the use of the water within a specified reasonable time constitutes noncompliance with 43 CFR 2802.1-5(b). As a result of appellant's inability to submit satisfactory evidence of water rights, BLM properly rejected his right-of-way application for an access road and canal pursuant to the regulation cited above.

We note that should appellant eventually obtain the requisite permit from the State of Wyoming, he may file another application for a right-of-way. Rejection of the instant application for a right-of-way, however, was warranted by the State Engineer's rejection of appellant's water permit application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

